

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 7418 OF 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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RAJENDRA @ RAJUBHAI GOVANBHAI PATEL & ORS. - Petitioner(s)**Versus****STATE OF GUJARAT - Respondent(s)**

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Appearance :

Shri Dhirendra Mehta for Petitioner(s).

Shri Hukum Singh, Assistant Government Pleader for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 14/03/2007****ORAL JUDGMENT**

1. From the records, it appears that the petitioner's father held certain land in his personal name and certain lands were jointly recorded in the names of the petitioner's father and uncle. The petitioner's father died somewhere in the year 1975, undisputedly, before 1st April, 1976,

and the uncle also died on 12th September, 1977. The petitioner is said to have succeeded to 24 Acres and 5 Gunthas of land from his father amounting to 34 Acres and 1 Guntha in terms of dry crop area.

1.1 The concerned competent authority, after allowing one unit on 30 acres, held that the petitioner was holding 4 Acres 10 Gunthas surplus land. The petitioner felt content of the order, but, the decision of the competent authority was taken in revision by the Deputy Collector, who, by his order dated 6th September, 1988, held that the petitioner was in possession of extra surplus land. He also held that two units could not be given to the petitioner and his mother because after succeeding to the property of the uncle, the property of the petitioner did not remain the ancestral property. He, accordingly, held that the petitioner was possessing 9 Acres 7 Gunthas [11 Acres 38 Gunthas equivalent to *jirayat* area]. The order was taken up in revision, but, as the revision came to be dismissed, the petitioner is before this Court.

2. The submission of Shri Mehta is that the approach of the authority was patently illegal because the original land held by the family would be taken to be the ancestral land and after the notional partition, each would be held to be possessing particular land and if any person or member of the family receives any additional land either in succession or under any other mode, then, that would be taken to be his personal land and addition of such land would not change the nature and character of the land, which otherwise was ancestral property.

3. Though Shri Hukum Singh, learned Counsel for the respondent, vehemently opposed the contention, but, in view of judgement dated 21st February, 2007 passed in Special Civil Application No.14077 of 1994 [*Thakorbbhai Dahyabhai Naik vs. State of Gujarat*],

I must uphold the contention of Shri Mehta.

4. The petition, in view of the aforesaid judgement, deserves to and is, accordingly, allowed. The orders passed by the Revisional Authority and the Revenue Tribunal are set aside. The matter is remitted to the Mamlatdar for reconsideration of the whole matter in accordance with the directions made in the case of ***Thakorbbhai Dahyabbhai Naik*** (*supra*). The petitioner shall appear before the Mamlatdar-cum-ALT on 23rd April, 2007 with a copy of this order. Rule is made absolute. No order as to costs.

[R.S.Garg, J.]

*kamlesh**